

E-Filed on 8/8/07

3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169-5996  
Facsimile (702) 949-8321  
Telephone (702) 949-8320

Susan M. Freeman AZ State Bar No. 004199  
Email: [sfreeman@lrlaw.com](mailto:sfreeman@lrlaw.com)  
Rob Charles NV State Bar No. 006593  
Email: [rcharles@lrlaw.com](mailto:rcharles@lrlaw.com)

Attorneys for USACM Liquidating Trust

STUTMAN, TREISTER & GLATT, P.C.  
FRANK A. MEROLA  
(CA State Bar No. 136934)  
EVE H. KARASIK  
(CA State Bar No. 155356)  
CHRISTINE M. PAJAK  
(CA State Bar No. 217173), Members of  
1901 Avenue of the Stars, 12<sup>th</sup> Floor  
Los Angeles, California 90067  
Telephone: (310) 228-5600  
Facsimile: (310) 228-5788  
Email: [fmerola@stutman.com](mailto:fmerola@stutman.com)

[ekarasik@stutman.com](mailto:ekarasik@stutman.com)

[cpajak@stutman.com](mailto:cpajak@stutman.com)

Counsel for the Official Committee Of  
Equity Security Holders Of USA Capital First Trust Deed Fund, LLC

SHEA & CARLYON, LTD.  
JAMES PATRICK SHEA  
(Nevada State Bar No. 000405)  
CANDACE C. CARLYON  
(Nevada State Bar No. 002666)  
SHLOMO S. SHERMAN  
(Nevada State Bar No. 009688)  
701 Bridger, Suite 850  
Las Vegas, Nevada 89101  
Telephone: (702) 471-7432  
Facsimile: (702) 471-7435  
Email: [jshea@sheacarlyon.com](mailto:jshea@sheacarlyon.com)  
[ccarlyon@sheacarlyon.com](mailto:ccarlyon@sheacarlyon.com)  
[ssherman@sheacarlyon.com](mailto:ssherman@sheacarlyon.com)

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE COMPANY,  
USA CAPITAL REALTY ADVISORS, LLC,  
USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
LLC,  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
USA SECURITIES, LLC,

Debtors.

**Affects:**

- ☐ All Debtors  
☒ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☒ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR  
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No. BK-S-06-10725 LBR

**Objection of USACM Trust To M.W. Gorts & Company Claim Filed in Wrong Debtor's Case; Objection of FTDF to Proposed Allowance of Claim**

Hearing Date: October 15, 2007  
Hearing Time: 9:30 a.m.

1 M.W. Gorts & Company ("Gorts") filed Proof of Claim No. 10725-00202 against  
2 USA Commercial Mortgage Company in the amount of \$20,000.00. The USACM  
3 Liquidating Trust (the "USACM Trust") hereby objects to the Gorts claim. The basis for  
4 the claim is shown on its face and in the attachment as an investment in USA Capital First  
5 Trust Deed Fund, LLC ("FTDF"). Moreover, the actual debtor listed in the "Name of  
6 Debtor" space on the Proof of Claim is USA First Trust Deed Fund. Accordingly, it is a  
7 claim that was incorrectly filed in the USA Commercial Mortgage Company ("USACM")  
8 case. The USACM Trust respectfully requests that this claim be disallowed as a claim  
9 against USACM. Any claim held by Gorts against USACM solely on account of its  
10 investment in FTDF is derivative of FTDF's claims against USACM. Under a settlement  
11 approved by the Court on June 12, 2007, all such FTDF claims were settled, with FTDF  
12 holding a \$7.0 million allowed general unsecured claim and beneficial interest in the  
13 USACM Liquidating Trust. The equity interest holders in FTDF will share in any  
14 recovery on account of that claim.

15 The Official Committee of Equity Security Holders of FTDF ("FTDF Committee")  
16 further object to allowance of Gorts' claim as a claim against the FTDF estate.

17 Bankruptcy Code section 502 authorizes a party in interest to object to claims. See  
18 11 U.S.C. § 502(a). Upon such objection, this Court, "after notice and a hearing, shall  
19 determine the amount of such claim in lawful currency of the United States as of the date  
20 of the filing of the petition . . . ." 11 U.S.C. § 502(b). Although a proper proof of claim is  
21 presumed valid under Bankruptcy Rule 3001(f), once an objection controverts the  
22 presumption, the creditor has the ultimate burden of persuasion as to the validity and  
23 amount of the claim. Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer  
24 Mortg.), 178 B.R. 222, 226 (9th Cir. B.A.P. 1995), aff'd, 91 F.3d 151 (9th Cir. 1996)  
25 (quoting In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3d Cir. 1992)).  
26

The FTDF Committee has analyzed the Gorts claim and has determined that it has been incorrectly designated as a "proof of claim." Pursuant to Bankruptcy Code section 502, a "creditor . . . may file a proof of claim." An equity security interest holder, however, must file a proof of interest. See 11 U.S.C. § 501(a). Bankruptcy Code section 101(16) defines "equity security" to include a "share in a corporation, whether or not transferable or denominated 'stock', or *similar security*" or a "warrant or right . . . to purchase, sell, or subscribe to a share, security, or interest" of a share in a corporation. 11 U.S.C. § 101(16) (emphasis added). See also Nev. Rev. Stat. §86.521 (upon dissolution of a limited liability company, a limited liability company must pay liabilities to creditors before paying liabilities in respect of profits and/or capital to members of the limited liability company).

The Gorts claim clearly reflects that it is based on its membership in the FTDF and not based on any debt the claimants hold against the FTDF. For example, annexed to the Gorts claim are account statements that list the number of shares Gorts holds in the FTDF, the price of such shares, and the FTDF Member's account identification number. Membership interests and/or shares in the FTDF clearly fall within the definition of "equity security" under Bankruptcy Code section 101(16). Thus, the holders of the equity interests are equity security interest holders of the FTDF and do not hold unsecured claims against the FTDF estate.

This objection does not seek to prejudice the rights of Gorts as an FTDF member to recover from the FTDF estate on account of its membership interest of \$20,368, which is actually \$368 more than the amount asserted in the Gorts claim. Gorts shall retain its interest in FTDF in the amount of \$20,368 as reflected in the books and records of FTDF. Indeed, Gorts has received distributions based on this FTDF membership interest to date, with no objection.

1 Accordingly, the USACM Trust and the FTDF Committee seek entry of an order  
2 that will disallow the Gorts claim against USACM, disallow any proposed allowance of  
3 the Gorts claim in the FTDF case, and appropriately allow Gorts to retain its equity  
4 interest in the FTDF in the amount of \$20,368 as reflected in the books and records of  
5 FTDF as of the bankruptcy petition filing date.

6 This objection is made pursuant to Bankruptcy Code section 502, Federal Rule of  
7 Bankruptcy Procedure 3007, and Local Rule of Bankruptcy Practice 3007.

8 Dated: August 8, 2007  
9

10 By: /s/ Eve H. Karasik  
FRANK A. MEROLA (CA State Bar  
11 No. 136934),  
EVE H. KARASIK (CA State Bar  
12 No. 155356), and  
13 CHRISTINE M. PAJAK (CA State Bar  
No. 217173), Members of  
14 STUTMAN, TREISTER & GLATT, P.C.  
15 1901 Avenue of the Stars, 12th Floor  
Los Angeles, CA 90067  
16 Telephone: (310) 228-5600

By: /s/ Rob Charles (#006593)  
SUSAN M. FREEMAN  
ROB CHARLES  
LEWIS AND ROCA LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169-0961  
Facsimile (702) 949-8321  
Telephone (702) 949-8320  
COUNSEL FOR USACM Liquidating  
Trust

17 and

18 CANDACE C. CARLYON  
19 Shea & Carlyon, Ltd.  
20 701 Bridger, Suite 850  
Las Vegas, NV 89101  
21 Telephone: (702) 471-7432  
22 COUNSEL FOR THE  
23 OFFICIAL COMMITTEE OF EQUITY  
24 SECURITY HOLDERS  
OF USA CAPITAL FIRST TRUST DEED  
25 FUND, LLC  
26

LEWIS  
AND  
ROCA  
LLP  
LAWYERS

Copy of the foregoing  
Mailed this 8th day of  
August, 2007 to:

M.W. Gorts & Company  
c/o Michael Gorts  
7820 Emerald Harbor Ct.  
Las Vegas, NV 89128

By /s/ Renee L. Creswell